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Practitioner's Docket No. RAR333.04

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Rael Sacks

Application No.: 10/615,967

Group No.: 3643

Filed: 07/09/2003

Examiner: Gellner, Jeffrey L.

Title: Extruded Landscape Edging System and Method of Making Same

Mail Stop APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. BOX 1450
Alexandria, VA 22313-1450

ATTENTION: Board of Patent Appeals and Interferences**APPELLANT'S REPLY BRIEF (37 C.F.R. 41.41)**

This reply brief is in response to the Examiner's Answer mailed on January 12, 2007.

This brief is transmitted in triplicate.

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. 41.37(c)):

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Richard A. Ryan, PTO # 39,014

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I. STATUS OF CLAIMS (37 C.F.R. 41.37(c)(iii))

The status of the claims is unchanged from that filed in Appellant's Brief and the Examiner's Answer, as repeated below:

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 1-22

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims previously canceled: 19 and 20
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 1-18, 21 and 22
4. Claims allowed: None
5. Claims rejected: 1-18, 21 and 22

C. CLAIMS ON APPEAL

The claims on appeal are: 1-18, 21 and 22.

II. GROUNDS OF REJECTION TO BE REVIEWED (37 C.F.R. 41.37(c)(vi))

Issue 1: Whether claims 1, 6, 8, 9, 12 and 17 are patentable under 35 U.S.C. § 103(a) over Lemelson (U.S. Patent No. 3,933,311) in view of Beladakis (U.S. Patent No. 5,715,628).

Issue 2: Whether claims 2 and 21 are patentable under 35 U.S.C. § 103(a) over Lemelson (U.S. Patent No. 3,933,311) in view of Beladakis (U.S. Patent No. 5,715,628) in view of Gruber (DE 3039971 A1).

Issue 3: Whether claims 3-5 and 13-15 are patentable under 35 U.S.C. § 103(a) over Lemelson (U.S. Patent No. 3,933,311) in view of Beladakis (U.S. Patent No. 5,715,628) in further view of Walsh, et al. (U.S. Patent No. 4,820,469).

Issue 4: Whether claims 7 and 16 are patentable under 35 U.S.C. § 103(a) over Lemelson (U.S. Patent No. 3,933,311) in view of Beladakis (U.S. Patent No. 5,715,628) in further view of Wuster (U.S. Patent No. 6,389,742).

Issue 5: Whether claims 10, 11 and 18 are patentable under 35 U.S.C. § 103(a) over Lemelson (U.S. Patent No. 3,933,311) in view of Beladakis (U.S. Patent No. 5,715,628) in further view of Danna, et al. (U.S. Patent No. 6,108,969).

Issue 6: Whether claim 22 is patentable under 35 U.S.C. § 103(a) over Lemelson (U.S. Patent No. 3,933,311) in view of Beladakis (U.S. Patent No. 5,715,628) in further view of Gruber (DE 3039971 A1) and Walsh, et al. (U.S. 4,820,469).

III. ARGUMENTS (37 C.F.R. 41.37(c)(vii))

No new arguments are presented by the Examiner in the Answer. As such, Appellant hereby incorporates herein each of his arguments set forth in the previously filed Appellant's Brief, with the addition of the comment set forth below for Issue 2.

Issue 1: Whether claims 1, 6, 8, 9, 12 and 17 are patentable under 35 U.S.C. § 103(a) over Lemelson (U.S. Patent No. 3,933,311) in view of Beladakis (U.S. Patent No. 5,715,628).

Appellant hereby incorporates herein his arguments set forth in the Appellant's Brief.

Issue 2: Whether claims 2 and 21 are patentable under 35 U.S.C. § 103(a) over Lemelson (U.S. Patent No. 3,933,311) in view of Beladakis (U.S. Patent No. 5,715,628) in view of Gruber (DE 3039971 A1).

Appellant hereby incorporates herein his arguments set forth in the Appellant's Brief. In addition, as set forth in the Appellant's Brief, Gruber merely discloses a plastic coated metal panel used for a landscape boundary and does not teach, compel or suggest the use of a core layer and a shell layer that are co-extruded such that the shell layer substantially encapsulates the core layer, as set forth in claims 2 and 21 of the present application. As set forth at page 3, lines 16-17, Gruber states "In an alternative embodiment, however, metal can also be used, especially one that has been coated with plastic." Appellant continues to disagree that this reference does not make it obvious to further modify the invention of Lemelson, as modified by Beladakis, by utilizing co-extrusion to substantially encapsulate the core layer as allegedly suggested by Gruber, as set forth by the Examiner.

Issue 3: Whether claims 3-5 and 13-15 are patentable under 35 U.S.C. § 103(a) over Lemelson (U.S. Patent No. 3,933,311) in view of Beladakis (U.S. Patent No. 5,715,628) in further view of Walsh, et al. (U.S. Patent No. 4,820,469).

Appellant hereby incorporates herein his arguments set forth in the Appellant's Brief.

Issue 4: Whether claims 7 and 16 are patentable under 35 U.S.C. § 103(a) over Lemelson (U.S. Patent No. 3,933,311) in view of Beladakis (U.S. Patent No. 5,715,628) in further view of Wuster (U.S. Patent No. 6,389,742).

Appellant hereby incorporates herein his arguments set forth in the Appellant's Brief.

Issue 5: Whether claims 10, 11 and 18 are patentable under 35 U.S.C. § 103(a) over Lemelson (U.S. Patent No. 3,933,311) in view of Beladakis (U.S. Patent No. 5,715,628) in further view of Danna, et al. (U.S. Patent No. 6,108,969).

Appellant hereby incorporates herein his arguments set forth in the Appellant's Brief.

Issue 6: Whether claim 22 is patentable under 35 U.S.C. § 103(a) over Lemelson (U.S. Patent No. 3,933,311) in view of Beladakis (U.S. Patent No. 5,715,628) in further view of Gruber (DE 3039971 A1) and Walsh, et al. (U.S. 4,820,469).

Appellant hereby incorporates herein his arguments set forth in the Appellant's Brief.

Conclusion

For the reasons advanced above and set forth in Appellant's Brief, Appellant respectfully contends that each claim appealed from is patentable. Therefore, reversal of the rejection based on 35 U.S.C. § 103(a) is courteously solicited.

3/12/2007

DATE


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